

ORIGINAL

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U.S. COURTS

02 FEB 23 PM 2:42

CATHERINE A. BURKE
CLERK U.S. DISTRICT COURT
IDAHO

Attorney for Defendant
CRUZ RUBALCAVA-RODRIGUEZ

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRUZ RUBALCAVA-RODRIGUEZ,
Defendant.

CR-02-003-S-EJL

MOTION TO CONTINUE TRIAL
AND TO EXTEND TIME WITHIN
WHICH TO FILE PRE-TRIAL
MOTIONS

The Defendant, CRUZ RUBALCAVA-RODRIGUEZ, by and through his attorney of record, Samuel Richard Rubin, Federal Defenders of Eastern Washington and Idaho, moves this honorable court to vacate and reset the date set for the filing of pretrial motions and the trial date currently set for March 5, 2002 for a period of at least 30 days. This motion is made upon the grounds that, pursuant to 18 USC §3161(h)(8)(A) and (h)(B)(iv), the interests of justice will best be served by granting the motion due to a delay in the furnishing of discovery because the Assistant U.S. Attorney was involved in another trial. A thorough investigation of the matter must be made and cannot be accomplished in time to provide the Defendant a sufficient time for effective preparation to present an adequate defense. Discovery has not been completed and counsel for the Defendant does not have adequate time to review discovery, prepare

1 pretrial motions, locate witnesses, and thus provide competent representation to the
2 Defendant. Further, it is hoped that further discussions can be held between the
3 government and the defense with regard to the possible resolution of this case without
4 a trial.

5 Counsel for the defendant requests that he be given additional time not less than
6 30 days which would be excludable time in order to give defense counsel the
7 opportunity to prepare an adequate defense. Counsel requests that the original date
8 for trial be vacated and a new trial date set and that the period of time between March
9 5, 2002 and the new trial date be deemed excludable time under the Speedy Trial Act,
10 18 USC 3161(h)(8)(A).

11 Further, the Defendant requests that the court issue an ORDER extending time
12 to file pre-trial motions, rescheduling a pretrial conference, and vacating the present
13 trial date.

14
15 RESPECTFULLY SUBMITTED THIS 27 day of February, 2002.

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18 Samuel Richard Rubin
19 FEDERAL DEFENDERS OF EASTERN
WASHINGTON AND IDAHO
Attorney for Defendant

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21 Suite #301
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8 Attorney for Defendant
9 CRUZ RUBALCAVA-RODRIGUEZ

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF IDAHO

12	UNITED STATES OF AMERICA,)	CR-02-003-S-EJL
)	
13	Plaintiff,)	AFFIDAVIT IN SUPPORT OF
)	MOTION TO CONTINUE TRIAL
14	v.)	AND TO EXTEND TIME WITHIN
)	WHICH TO FILE PRE-TRIAL
15	CRUZ RUBALCAVA-RODRIGUEZ,)	MOTIONS
	Defendant.)	
16	_____)	

17 SAMUEL RICHARD RUBIN, being first duly sworn upon oath, deposes and says:

18 1. I am an attorney licensed to practice in the State of Idaho, in the United
19 States District Court for the District of Idaho, the Ninth Circuit Court of Appeals and
20 the United States Supreme Court.

21 2. I have been appointed by the court to represent Cruz Rubalcava-Rodriguez
22 in this matter.

23 3. The Government provided discovery late as the Assistant U.S. Attorney was
involved in another trial.

4. The defense in undertaking an important investigation into the evidence in
this matter that will not be completed before the date of trial. This investigation is
essential to provide a proper defense.

1 5. Because of the delay in receiving discovery I could not conduct an
2 investigation, locate witnesses, or prepare pretrial motions.

3 6. I have spoken to Monte Stiles, the Assistant United States Attorney
4 handling this matter, and he concurs in the continuance of this matter.

5 7. Counsel for the defendant requests that he be given additional time not
6 less than **30** days which would be excludable time in order to give defense counsel the
7 opportunity to prepare an adequate defense. Counsel requests that the original date
8 for trial be vacated and a new trial date set and that the period of time between March
9 5, 2002, and the new trial date be deemed excludable time under the Speedy Trial
10 Act, 18 USC 3161(h)(8)(A). Further, the Defendant requests that the court extend the
11 time to file pre-trial motions and set another date for a pretrial conference to inquire
12 as to the status of the case.

13 8. Counsel requests that sentencing not be set during the periods:

14 a) March 12, 2002 through March 15, 2002 (annual conference for Federal
15 Defenders)

16 b) March 23, 2002 through March 30, 2002 (vacation)

17 c) May 11, 2002 through May 19, 2002 (son's law school graduation and
18 teaching assignment at Emory University College of Law)

19 d) August 3, 2002 through August 10, 2002 (vacation)

20 e) August 23, 2002 (CJA Panel Attorneys/District Court seminar).

21
22 RESPECTFULLY SUBMITTED this 27 day of February, 2002.
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Samuel Richard Rubin
FEDERAL DEFENDERS OF EASTERN
WASHINGTON AND IDAHO
Attorney for Defendant

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8 Attorney for Defendant
9 CRUZ RUBALCAVA-RODRIGUEZ

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF IDAHO

12 UNITED STATES OF AMERICA,)
13) CR-02-003-S-EJL
14 Plaintiff,)
15) CERTIFICATE OF SERVICE
16 v.)
17)
18 CRUZ RUBALCAVA-RODRIGUEZ,)
19 Defendant.)
20)
21)
22)
23)

24 I HEREBY CERTIFY that on this date, I served a true and complete copy of the
25 herein and foregoing MOTION TO CONTINUE TRIAL AND TO EXTEND TIME WITHIN
26 WHICH TO FILE PRE-TRIAL MOTIONS, AFFIDAVIT IN SUPPORT OF MOTION TO
27 CONTINUE TRIAL, and proposed ORDER upon the following parties to this action via
28 general mail delivery addressed as follows: Monte Stiles, Assistant U.S. Attorney, Box
29 32, Boise, Idaho 83702.

30 DATED this 28 day of February, 2002.

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Kathy Bozman
FEDERAL DEFENDERS OF EASTERN
WASHINGTON AND IDAHO